

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: October 27, 1998

TO: Mary Zelmo Asseo, Regional Director, Region 24

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Hospital Auxilio Mutuo), Case 24-CG-33

This Section 8(g) case was submitted for advice on whether (1) the Union's handbilling and discussions with employees on Hospital premises; and/or (2) the Union's subsequent demonstration on a public avenue outside the Hospital, constituted picketing.

On May 6, 1998, Union Representative Quinones with two other unknown persons stood in front of hospital elevators in the south wing and conversed with persons who passed by. All three handed out leaflets which stated that the Union meetings for Hospital Units "A" and "C" were on schedule and that participants would leave for the meetings from the Hospital lobby at 5:00 and 7:00 p.m. Around 5:00 p.m., Quinones and 7 to 8 employees moved to the lobby and, as their numbers grew, moved to another area in front of the External Clinic. A total of over 50 employees met in discussion there until almost 6:00 p.m., when those employees left. Quinones stayed until 7:00 p.m. when the next meeting started. The second meeting involved only around 15 employees and lasted around 15 minutes. Thereafter, Quinones departed from the Hospital parking lot in a van which has "ULEES", the Union's acronym, painted on the side. It appears that the only conduct engaged in by Quinones was the two meetings and the leafleting, neither of which disrupted patient care.

On May 20, the Union conducted a parade or demonstration at around 5:30 p.m., by driving a caravan of cars on the main avenue in front of the Hospital. In preparation, around 1:30 p.m. Quinones distributed handbills in the Hospital cafeteria and also distributed stickers in the lobby. When Quinones started to take pictures in the lobby, a guard advised him that such was not permitted; Quinones ceased but refused to leave. Around 3:00 p.m., Quinones and four helpers began distributing stickers in the lobby stating "we demand a collective-bargaining agreement now." Around 4:30 p.m., Quinones left the Hospital.

By 5:30 p.m., a caravan of around 50 people and 25 cars passed down the Avenue in front of the Hospital. Hospital vehicular entrance gates are on this Avenue; the Hospital's main entrance is around one city block from these gates with a lawn and trees in between. As the demonstration passed in front of the Hospital, some participants stopped briefly for one to two minutes to honk car horns and yell slogans. The state police had been notified of the caravan and they were stationed at the Hospital gates together with Hospital security guards. There is no evidence that this or any other aspect of the demonstration blocked traffic ingress to or egress from the Hospital.

After the demonstration, Quinones returned to the Hospital and parked the Union van on the Avenue in the lane closest to the Hospital, directly adjacent to the Hospital entrance. There is no evidence that the Union van blocked traffic; cars apparently were free to flow around the parked van and enter the Hospital gate. ⁽¹⁾ Quinones and five others circled around the van, while Quinones spoke slogans into a loudspeaker. Other than the Union logo on the side of the van, no signs or placards were displayed. Quinones and the van remained for around 15 minutes to one-half hour before leaving.

We conclude that the Region should dismiss the charges, absent withdrawal, because none of the activity was sufficiently confrontational to amount to picketing within Section 8(g).

In *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, ⁽²⁾ the Supreme Court held that Section 8(b)(4)(ii)(B) of the Act does not proscribe peaceful handbilling, unaccompanied by picketing, urging a consumer boycott of a neutral employer. In so doing, the Court noted that "there would be serious doubts about whether Section 8(b)(4) could constitutionally ban peaceful handbilling not involving nonspeech elements, such as patrolling." 485 U.S. at 568.

In contrast to handbilling, picketing is a "signal" which usually entails a patrolling of the facility or location involved, and is aimed at inducing those who approach the location of the demonstration to take some sympathetic action, e.g., to decide not to enter the facility involved. It is this "signal" which provokes people to respond without inquiring into the ideas being disseminated and which distinguishes picketing from handbilling and other forms of communication.⁽³⁾

The presence of picket signs is not a sine qua non for a determination that activity should be considered tantamount to picketing.⁽⁴⁾ Conduct equivalent to patrolling is an indication that the handbilling may rise to the level of picketing.⁽⁵⁾ However, in *Alden Press, Inc.*,⁽⁶⁾ the Board held that "patrolling and the carrying of placards . . . does not per se establish that 'picketing' in the sense intended by Congress was involved . . . 'One of the necessary conditions of picketing is a confrontation in some form between union members and employees, customers, or suppliers who are trying to enter the employer's premises.'" (citation omitted).⁽⁷⁾ In that case, the Board found that a union had not violated Section 8(b)(4)(B) by parading through and patrolling shopping centers and public buildings in a nonconfrontational manner intended to publicize its dispute with the employer, rather than to dissuade customers from entering the surrounding stores and employees from performing services. Although admittedly designed as an appeal to the public not to patronize the targeted neutral employer, the union's activity there did not occur at places where that employer conducted business.⁽⁸⁾

In the instant case, we initially conclude, in agreement with the Region, that the Union's on premises conduct of May 6 did not constitute picketing within 8(g). Quinones and the others merely engaged in handbilling, which clearly is not picketing under *Edward J. DeBartolo*, and Quinones otherwise engaged in no confrontational activity.

Regarding the May 20 Union caravan demonstration which passed in front of the Hospital, we conclude in agreement with the Region that this conduct did not amount to picketing under the rationale of *Alden Press*, supra. We note that some participants stopped very briefly to honk car horns and yell slogans. However, the demonstration, as a whole and even with regard to these momentary pauses, was conducted in a nonconfrontational manner. The demonstration was intended to publicize the Union's dispute with the Hospital, and not to dissuade patients or visitors from entering therein. Nor is there any evidence that the demonstration caused any disruptions or blockages.

Finally, with regard to Quinones' return to the Hospital after the demonstration, parking the van near the entrance, and circling the van with a bullhorn, we also conclude that this activity did not constitute picketing. The instant circumstances involved only five persons who were positioned at a location far removed from the pedestrian entrance to the Hospital. Quinones merely used a bullhorn, and he and the others carried no signs. In that regard, the Union's "ULEES" logo painted on the side of the van was not easily visible to approaching cars seeking to enter the Hospital and did not publicize any Union dispute. Most importantly, there is no evidence that the Union van blocked any vehicular entrance into the Hospital. In these circumstances, there is insufficient evidence to establish that Quinones' activity after the demonstration was confrontational and thus amounted to picketing within 8(g).

We would distinguish *SEIU Local 535 (Kaiser Foundation)*,⁽⁹⁾ which involved a press conference directly in front of a hospital entrance. In that case, around 30 to 45 persons were positioned directly in front of the hospital entrance for 30 to 45 minutes. Around 15 of these persons milled about while carrying signs which identified the Union and publicized its disagreements with the hospital. The Board adopted the ALJ who noted that the presence of persons carrying signs in front of the hospital entrance "could induce action disruptive of patient care" and thus amounted to confrontational activity and picketing. In contrast, the instant circumstances involved a few persons, carrying no signs, located far from the entrance, and neither the van nor the circling persons blocked vehicles from entering the Hospital.

Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

¹ In fact, Quinones asserts that the police had authorized the Union to park its van in that same location in the past in order to minimize traffic disruption.

² 485 U.S. 568 (1988).

³ See, e.g., District 1199, National Union of Hospital & Health Care Employees (South Nassau Communities Hospital), 256 NLRB 74, 75 (1981); Teamsters Local No. 688 (Levitz Furniture Co. of Missouri, Inc.), 205 NLRB 1131, 1133 (1973), and authorities cited in those cases.

⁴ Lawrence Typographical Union No. 570 (Kansas Color Press Inc.), 169 NLRB 279, 283 (1968), enf'd. 402 F.2d 452 (10th Cir. 1965).

⁵ Cf. District 1199, National Union of Hospital & Health Care Employees (United Hospitals of Newark), 232 NLRB 443, and authorities cited therein (1977), enf'd. 84 LC para. 10826, No. 77-2474 (3d Cir., August 11, 1978)(Section 8(g)); Lumber & Sawmill Workers Local Union No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965)(discussing in the context of 8(b)(7)(C) the meaning of "patrolling").

⁶ 151 NLRB 1666 (1965)

⁷ Id. at 1669.

⁸ Id. at 1668-1669. See also Service Employees Int'l Union, Local 77 (Empire Industrial Maintenance, Inc.), Cases 32-CA-1226, et al., Advice Memorandum dated May 27, 1988. Compare Service and Maintenance Employees Union, Local 399 (The William T. Burns Int'l Detective Agency, Inc.), 136 NLRB 431 (1962)(patrolling in a manner indicating 'clear threat of physical restraint upon those desiring to enter' is coercive within meaning of 8(b)(4)(ii)(B) and outside protection of publicity proviso).

⁹ 313 NLRB 1201 (1094).